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7:18-CV-00678-JW

2008 MAR 13 PM 11:07

RICHARD J. SCHNEIDER
CLERK
U.S. DISTRICT COURT
NO. DIST OF CA SJ

8 UNITED STATE DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

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11 DATA CAPITAL CORPORATION, a) Case No. C 08-00678 JW (HRL)
12 California Corporation,)
13 Plaintiff,)
14 vs.)
15 SAFEDESK SOLUTIONS, INC., an)
16 Oregon Corporation; PHIL AUTREY, an)
17 individual; DOES 1 through 25, inclusive)
Defendants.)

**FIRST AMENDED COMPLAINT
(DECLARATORY RELIEF)**

18
19 PLAINTIFF, in accordance with the provisions of Rule 15(a)(1)(A), F.R.Civ.P., submits its First
20 Amended Complaint and, for a claim against defendants, and each of them, alleges:

21 **GENERAL ALLEGATIONS APPLICABLE TO ALL CAUSES OF ACTION**

22 1. Plaintiff is a corporation existing and authorized to do business pursuant to the laws of the
23 State of California, maintaining its principal place of business in San Jose, California.

24 2. Defendant SafeDesk Solutions, Inc. ("SafeDesk") is an Oregon corporation maintaining its
25 principal place of business in Spokane, Washington.

26 3. Defendant Phil Autrey is an individual whom plaintiff is informed and believes, and upon
27 that basis alleges, resides in Spokane, Washington.

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1 4. Plaintiff is currently unaware of the true names and capacities of the defendants sued herein
2 as DOES 1 through 25, inclusive, and thus proceeds against those defendants by their fictitious names.
3 When the true names and capacities of the fictitiously names defendants have been ascertained, plaintiff
4 will amend this complaint to set forth those true names and capacities. At all times material hereto each
5 defendant was acting as the duly authorized agent, representative and employee of each of the remaining
6 defendants and, in performing the acts herein alleged, was acting within the course and scope of that
7 agency and employment.

8 5. Plaintiff is a provider of IT management solutions and services for large government and
9 telecommunications companies. Defendant SafeDesk is a developer of software. At all times material
10 hereto defendant Autrey was the President and Chief Executive Officer of SafeDesk. Autrey and
11 SafeDesk had developed and owned a variety of intellectual property, collectively referred to herein as
12 the “SafeDesk IP”.

13 6. Beginning in early 2007 the parties entered into negotiations for, inter alia, the acquisition
14 by DCC of the SafeDesk IP and other assets of SafeDesk and Autrey. On June 8, 2007 the parties
15 entered into that certain "IP Asset Sale and Purchase Agreement between SafeDesk and Phil Autrey
16 (Seller) and Data Capital Corporation (Buyer)", a true copy of which is attached as Exhibit "1" and
17 incorporated herein by this reference (the "Agreement"). Pursuant to the Agreement, SafeDesk and
18 Autrey transferred ownership to DCC of, inter alia, all of the SafeDesk IP. Plaintiff has performed all
19 terms and conditions of the Agreement required to be performed by it, except as performance has been
20 excused by the acts of defendants.

21 7. Defendants, acting through their counsel, have asserted that they are not bound by the
22 Agreement, are entitled to rescission of the Agreement and that defendants' remain the owners of the
23 SafeDesk IP.

FIRST CLAIM FOR RELIEF

(DECLARATORY RELIEF AGAINST ALL DEFENDANTS)

26 8. Plaintiff repleads and incorporates by reference each and every allegation of paragraphs 1
27 through 7 above.

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1 9. Plaintiff contends that the Agreement is a binding and subsisting contract between plaintiff
 2 and defendants and that plaintiff's rights under the Agreement include ownership of all of the SafeDesk
 3 IP. Plaintiff is informed and believes, and upon that basis alleges, that defendants dispute each of these
 4 contentions, ands in turn contend that the Agreement is not binding and that defendants, and not
 5 plaintiff, is the owner of the SafeDesk IP..

6 10. Plaintiff is entitled to a judicial declaration of this court resolving the disputes of the parties
 7 as hereinabove alleged. Such a determination is necessary and appropriate in order to avoid a
 8 multiplicity of actions, and in order that the parties can determine their respective rights and obligations
 9 under the Agreement.

10 WHEREFORE, plaintiff is entitled to judgment herein against all defendants, jointly and
 11 severally, as follows:

- 12 1. For a judicial declaration that the Agreement is a valid and subsisting Agreement and that
 13 plaintiff is the owner of the SafeDesk IP as a result of the Agreement;
 14 2. For costs incurred herein; and
 15 3. For such further relief as the court deems appropriate.

16 DATED: March 12, 2008

17
 18 JULIAN A. POLLOK
 19 LAW OFFICES OF JULIAN A. POLLOK
 20 A Professional Corporation

21 By: 

22 Julian A. Pollok
 23 Attorneys for Plaintiff
 24 Data Capital Corporation

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 1000 Wilshire Boulevard, Suite 620, Los Angeles, California 90017.

On March 12, 2008, I served true copies of the following document(s) described as

FIRST AMENDED COMPLAINT (DECLARATORY RELIEF)

on the interested parties in this action as follows:

Clifford E. Yin, Esq.
Coblentz, Patch, Duffy & Bass LLP
One Ferry Building, Suite 200
San Francisco, California 94111-4213
Telephone: (415) 391-4800
Facsimile: (415) 989-1663

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Law Offices of Julian A. Pollok, A Professional Corporation's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on March 12, 2008, at Los Angeles, California.

S. Suzanne Pollok
S. Suzanne Pollok